IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order no.l of 2006
with
Civil Application No.l of 2006

Smt Laxmibai Baburao Sarde ..Appellant
vs
Shri Tukaram Krishna Kamble and ors. respondents

Mr Surel Shah for appellant
Mr I M Khairdi for respondent nos 2 to 4

CORAM; A.M.KHANWILKAR J.

DATED 24.l.2006

P.C.

l. Heard learned counsel for the parties.

2. This appeal takes exception to the order passed by the Civil Judge, S D Barsi dated ll.l2.2005 below Exh 49 in Special Civil Suit No. 8 of 2004. The said application was taken out by the appellant/ plaintiff to restrain the respondents/ defendants from alienating and creating third party interest in regard suit land and from obstructing to the possession of the plaintiff over the suit land. The court below has considered the materials produced by the parties on record and on the basis of the said materials has come to the positive finding that prima facie it appears that the defendant nos.l to 4 were in possession of the suit

land. In support of this opinion the court has considered 7 x l2 extract. In so far as the documents produced by the plaintiff issued by the sugar factory regarding supply of sugarcane, the court below has considered the efficacy of the said receipts in para ll and has noted that on a careful examination of the receipts it would appear that portion of the said receipts are not visible and cannot be read excluding gat no.404. Besides, the original receipts were not placed on record. The court also noted that the figure 404 is in dark colour. The mode of writing of the figure is also different than the other figures which are appearing in the said receipt. The court below has, therefore, prima facie opined that the receipts cannot be taken into account for considering the claim of the plaintiff that the plaintiff is in possession of the suit land and was used for plantation of sugarcane. The court below on the other hand has noted that the 7 x l2 extract clearly indicates that the suit land was not under cultivation till 2004. Since 2004 it is the respondents-defendants who have started cultivating the sugarcane crop in the suit land. Besides the receipts issued by the sugar factory, the plaintiff also placed reliance on the receipt issued by the irrigation department to contend that water was

supplied to the suit land gat no. 404. In this context the court below has taken the view that the receipts appear to be got up documents and have been secured at the instance of plaintiff's son who was working in the irrigation department. This opinion has been reached on the finding that from the revenue record it was clear that the suit land was not under cultivation during l999 to 2004 and if it is so the receipts issued by the irrigation department were doubtful. The opinion expressed by the trial court on the analysis of these documents is a possible view At this interlocutory stage it is not possible to take different view than the one reached by the trial court.

3. To get over this position the learned counsel for the appellant, however, referred to para 4 of the written statement filed by the defendant nos.l to 4 in Special Civil Suit No. 753 of l998. According to the appellant there is clear admission of the fact by the said defendants that the possession of the suit land has been made over to the plaintiff in May l998 on accepting earnest money of Rs.45,000/-. This argument seems to be attractive but I am in agreement with the stand taken on behalf of the respondents that the said written statement cannot enure to the benefit of

the appellant to establish the factum of possession. In the first place, the said written statement has been filed in some other proceedings, to which the appellant is not a party. That suit is between the defendants interse, in which the defendants claim to be in possession of half portion of the suit land. The document which is pressed into service on behalf of the appellant will have to be proved in evidence in conformity with the provisions of the Evidence Act. Only then the contents of the said document can be taken into account to hold against the respondents. That will only be possible at the stage of trial. From the reply on record it is not possible to accept the stand that the appellant is in possession of the suit land .That the finding reached by the trial court will have to be upheld.

4. The learned counsel for the appellant, however, relied on the decision of the Apex Court in the case of Uttam Singh Dugal and Co Ltd vs Union Bank of India and ors, AIR 2000 SC 2740. Indeed, in this decision the Apex Court has observed that the judgement on admissions of the party could be passed where there is clear admission of facts in face of which it is impossible for party making such admission to succeed. This submission,

however, clearly overlooks that the document which is sought to be relied by the appellant to hold against the defendants is the written statement filed in some other proceedings and not in the present suit. In that sense it is not a clear admission of fact regarding the issue of possession by the defendants in the present proceedings. Whether the appellant is bound by the statement made in the written statement filed in some other proceedings is a matter, which will have to be considered only at the trial where the said document will have to be proved in evidence in the first place, to be made admissible.

5. I also find force in the submission of the respondents that the trial court has noted that the appellant has not approached the court with clean hands as the possibility of manipulation of record in the form of securing receipts from the irrigation department and of tampering the receipts issued by the sugar factory cannot be ruled out. In such a case, no discretionary relief can be granted in favour of the litigant, who has approached the court with unclean hands.

6. During the course of the arguments, the learned counsel for the appellant suggested that the court

may consider appointing Court Receiver in respect of the suit land. It is not possible to accept this request across the bar. No formal prayer has been made either before the lower court or before this court to consider this request.It will be open for the appellant to take recourse to appropriate remedy as may be advised on the issue of appointment of Court Receiver including inviting order from the trial court to pass a decree on admission. The trial court will consider these applications in accordance with law. All questions in that behalf are left open.

7. Taking any view of the matter at this prima facie stage it is not possible to entertain the grievance of the appellant that the trial court has committed any error much less manifest error so as to interfere with the order as passed on Exh 49. Hence this appeal fails and the same is dismissed. For the reasons recorded in this order, the companion application will have to be rejected. The same is also dismissed.